

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

THOMAS S. DOHERTY,

Petitioner,

v.

Civ. No. 07-1148 JH/RLP

BELEN MAGISTRATE COURT and
STATE OF NEW MEXICO,

Defendants.

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION¹

1. This is a proceeding brought pursuant to 28 U.S.C. § 2254. Petitioner was found guilty of several misdemeanor offenses and sentenced to a term of 90 days, with 88 days suspended. Exhibit A to Answer [Doc. 10]. Petitioner was also charged to pay various fines and court costs; to participate in a treatment program and perform 48 hours of community service; and have an ignition interlock device installed on his vehicle. Exhibits B & C.

2. Petitioner appealed this decision and after a trial de novo, the state district court affirmed the Belen Magistrate Court's decision. Exhibits D, E, & F.

3. Petitioner failed to pay the fines he had agreed to pay (Exhibit C) and when he failed to appear at the scheduled October 15, 2007 hearing, a bench warrant for his arrest was issued on November 6, 2007. Exhibit I. Petitioner's § 2254 petition was filed on November 14, 2007. According to Defendants, due to the pendency of this proceeding, the Belen Magistrate Court cancelled the warrant pending the outcome of Petitioner's habeas proceeding in this Court. See Answer [Doc. 10] at ¶¶ 8-9.

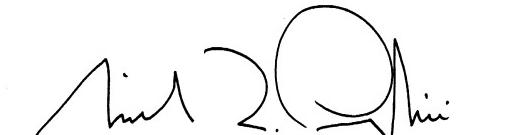
4. Petitioner's sole claim before this court is that the Belen Magistrate Court

failed to consider his Motion to Dismiss. See Petition [Doc. 1], Claim 1. He offers no supporting facts or allegations. I find that Petitioner has failed to set forth a claim that he is in custody in violation of the United States Constitution or federal law as required by § 2254(a).

5. Petitioner has also filed a Motion for Appointment of Counsel. Because there appears to be no reasonable grounds for relief, I find that the Motion should be denied.

RECOMMENDED DISPOSITION

I recommend that Petitioner's Motion for Appointment of Counsel [Doc. 3] be denied and that the Petition for Writ of Habeas Corpus be dismissed with prejudice.



Richard L. Puglisi
United States District Court

¹ Within ten (10) days after a party is served with a copy of the Magistrate Judge's Report and Recommendation that party may, pursuant to 28 U.S.C. § 636 (b)(1), file written objections in the United States District Court to the Report and Recommendation. A party must file any objections within the ten-day period allowed if that party wants to have appellate review of the Report and Recommendation. If no objections are filed, no appellate review will be allowed.